

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**\*E-FILED - 12/5/08\***

IN RE FOUNDRY NETWORKS, INC.  
DERIVATIVE LITIGATION

Master File No. C-06-05598-RMW

THIS DOCUMENT RELATES TO:

All Actions

**~~PROPOSED~~ ORDER PRELIMINARILY  
APPROVING SETTLEMENT**

**~~PROPOSED~~ ORDER PRELIMINARILY APPROVING SETTLEMENT**  
MASTER FILE NO. C-06-05598-RMW

1           The Unopposed Motion for Preliminary Approval of Proposed Settlement (the "Motion") of  
2 derivative plaintiffs Sunanda A. Desai, as Trustee of and for the Sunanda A. Desai Revocable  
3 Trust, Jeanne McDonald and David M. Jackson ("Federal Plaintiffs") on behalf of themselves  
4 individually and derivatively on behalf of nominal defendant Foundry Networks, Inc. ("Foundry")  
5 for preliminary approval of the Stipulation of Settlement ("Stipulation") and the Settlement  
6 contained therein (the "Settlement") entered into by the Settling Parties on or about October 28,  
7 2008, came on regularly for consideration by the Court. The Court having reviewed and  
8 considered all documents, evidence, and arguments of counsel presented in support of said motion,  
9 and good cause appearing therefore, enters this Order Preliminarily Approving Settlement (the  
10 "Preliminary Approval Order") as follows:

11           1. Unless otherwise stated here, all capitalized terms contained in this Order shall have  
12 the same meaning and effect as stated in the Stipulation.

13           2. The Settlement appears to be the product of serious, informed, non-collusive  
14 negotiations and falls within the range of possible approval and, therefore, merits further  
15 consideration.

16           3. The Settlement, and the terms and conditions set forth therein, is preliminarily  
17 approved as fair, reasonable and adequate, and is found to be in the best interests of Foundry and  
18 Current Foundry Shareholders.

19           4. Within ten days (10) after entry of this Order, Foundry shall disseminate the Notice  
20 to Current Foundry Shareholders in accordance with the terms of the Stipulation.

21           5. At least seven (7) days prior to the Settlement Hearing, Foundry's Counsel shall file  
22 with the Court and serve on Plaintiffs' Counsel proof, by affidavit or declaration, of such efforts to  
23 disseminate the Notice.

24           6. The Court approves, as to form and content, the Notice and Summary Notice of  
25 Proposed Settlement of Derivative Action and of Settlement Hearing (the "Notice"), attached as  
26 Exhibit "B" and "B-1" to the Stipulation, and finds that the Notice, substantially in the manner and  
27 form set forth in this Order, meets the requirements of Rule 23.1 of the Federal Rules of Civil  
28

1 Procedure and due process under the United States Constitution and any other applicable laws, is  
 2 the best notice practicable under the circumstances, and shall constitute due and sufficient notice of  
 3 all matters relating to the Settlement.

4 7. The Court has scheduled a Settlement Hearing, which will be held on \_\_\_\_\_  
 5 2/20 <sup>9</sup> 2008 at 9: 00 a.m., at the U.S. District Courthouse, 280 South 1st Street, San  
 6 Jose, California, 95133, Fourth Floor, Courtroom <sup>6</sup> 8, to:

- 7 a. determine whether to finally approve the Settlement pursuant to Rule 23.1 of
- 8 the Federal Rules of Civil Procedure as fair, reasonable, adequate, and in the
- 9 best interests of the Company and current Foundry shareholders;
- 10 b. consider an Order and Final Judgment dismissing the Federal Action with
- 11 prejudice, with each party to bear its, his or her own costs, and releasing and
- 12 enjoining prosecution of any and all claims to be released pursuant to the
- 13 Stipulation;
- 14 c. determine whether to approve attorneys' fees and expenses, to be funded by
- 15 Foundry or its insurers; and
- 16 d. hear other such matters as the Court may deem necessary and appropriate.

17 8. The Settlement Hearing may be postponed, adjourned, or continued by order of the  
 18 Court without further notice other than announcement at such Settlement Hearing or subsequent  
 19 adjournment.

20 9. Federal Plaintiffs shall file and serve their Motion for Final Approval of the  
 21 Stipulation of Settlement ("Final Approval Motion") and for an award of attorney's fees and  
 22 expenses and any supporting papers, at least thirty (30) days before the Settlement Hearing.

23 10. Any Current Foundry Shareholder who wishes to object to the fairness,  
 24 reasonableness or adequacy of the Settlement, to any term of the Settlement Agreement, or to the  
 25 proposed award of attorneys' fees and expenses must file an objection no later than twenty-one  
 26 (21) days prior to the Settlement Hearing by:

- 27 a. filing with the Clerk of Court proof of ownership of Foundry common stock
- 28 including the number of shares of Foundry common stock held and the date
- of purchase, and providing a statement that indicates the nature of such
- objection, any legal support and/or evidence that such shareholder wishes to
- bring to the Court's attention or introduce in support of such objection, and
- any documentation in support of any objection; and

- 1                   b.       simultaneously serving copies of such proof, statement and documentation,  
2                   together with copies of any other papers or briefs such shareholder files with  
3                   the Court, in person or by mail, upon counsel listed below, provide that if  
4                   service is made by mail, then service by electronic mail or facsimile also  
5                   shall be made on counsel listed below, no later than twenty-one (21) days  
6                   before the date of the Settlement hearing:

7                   Nichole T. Browning  
8                   Schiffirin Barroway Topaz & Kessler LLP  
9                   2125 Oak Grove Road, Suite 120  
10                  Walnut Creek, CA 94598-2537

11                  *Counsel for Federal Plaintiffs Sunanda A. Desai, Jeanne  
12                  McDonald and David M. Jackson*

13                  Jeffrey S. Facter  
14                  Shearman & Sterling LLP  
15                  525 Market Street, Suite 1500  
16                  San Francisco, CA 94105-2723

17                  *Counsel for Nominal Defendant Foundry Networks, Inc.*

18                  11.       Any shareholder who does not timely make his, her, or its objections to the  
19                  Settlement in the manner specified above shall be deemed to have waived such objections and shall  
20                  forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the  
21                  proposed Settlement, or the Federal Plaintiffs Counsel's application for attorneys' fees and  
22                  expenses, and shall otherwise be bound by the Judgment and the releases given pursuant thereto.

23                  12.       In the event a Current Foundry Shareholder files a timely objection to the fairness,  
24                  reasonableness or adequacy of the Settlement, Federal Plaintiffs shall file and serve a reply brief in  
25                  further support of the Final Approval Motion, which shall include a response to any timely-filed  
26                  objections, at least seven (7) days before the Settlement Hearing.

27                  13.       In the event a Current Foundry Shareholder files a timely objection to the fairness,  
28                  reasonableness or adequacy of the Settlement, Defendants shall file and serve any papers in support  
29                  of the Final Approval Motion, or in response to any timely-filed objections, at least seven (7) days  
30                  before the Settlement Hearing.

31                  14.       Any objector who timely files and serves a written objection in accordance with  
32                  paragraph 10 above, may also appear at the Settlement Hearing either in person or through counsel  
33                  retained at the objector's expense. Objectors or their attorneys intending to appear at the

1 Settlement Hearing must effect service of a notice of intention to appear, which sets forth, among  
2 other things, the name, address and telephone number of the objector (and, if applicable, the name  
3 address and telephone number of the objector's attorney), and the identities of any witnesses that  
4 such shareholder plans to call at the Settlement Hearing, on counsel listed above (at the address set  
5 out above) and file such notice of intention to appear with the Court by no later than five (5) days  
6 before the date of the Settlement Hearing. Filing and service may be effected by the Court and  
7 counsel by mail, provided that such service by electronic mail or facsimile is also made on counsel  
8 listed above no later than five (5) days before the date of the Settlement Hearing. Any objector  
9 who does not timely file and serve a notice of intention to appear in accordance with this paragraph  
10 shall not be permitted to be heard at the Settlement Hearing, except upon a showing of good cause  
11 and excusable neglect.

12 15. If the Settlement receives final approval by the Court ("Final Court Approval"), the  
13 Court shall enter the Final Order and Judgment in the form submitted by the Settling Parties, or in  
14 any other form of order deemed appropriate by the Court. The Judgment shall be fully binding  
15 with respect to all parties in accordance with the terms of the Stipulation.

16 16. The Court adjudges that, if and when the Judgment is entered, upon the Effective  
17 Date, (a) Lead Plaintiffs on their own behalf individually, and derivatively on behalf of Foundry  
18 and Current Foundry Shareholders, and (b) Foundry shall have, and by operation of the Judgment  
19 shall be deemed to have, fully, finally, and forever released, relinquished and discharged all  
20 Released Claims against the Released Persons and all claims that were made or could have been  
21 made against the Released Persons arising out of, relating to, or in connection with the prosecution,  
22 defense, Settlement or resolution of the Derivative Litigation, including Unknown Claims.

23 17. The Court adjudges that, if and when the Judgment is entered, upon the Effective  
24 Date, each of the Released Parties shall be deemed to have, and by operation of the Judgment shall  
25 have, fully, finally, and forever released, relinquished and discharged Lead Plaintiffs and Lead  
26 Plaintiffs' Counsel from all claims (including Unknown Claims), arising out of, relating to, or in  
27

1 connection with the institution, prosecution, assertion, Settlement or resolution of the Derivative  
2 Litigation or the Released Claims.

3 18. All proceedings and all further activity regarding or directed towards the Federal  
4 Action, including but not limited to all discovery activities, shall be stayed and suspended until  
5 further order of this Court, except as to such actions as may be necessary to implement the  
6 Settlement or this Order.

7 19. In the event that the Stipulation is not approved by the Court, or the Settlement set  
8 forth in the Stipulation is terminated, or fails to become Final in accordance with its terms, all  
9 parties to the Federal Action (including Lead Plaintiffs and all Defendants) shall be restored to  
10 their respective positions in the Federal Action as of the date of signing the Stipulation. In such  
11 event, all negotiations, proceedings, communications, correspondence and documents prepared and  
12 statements made in connection with the Stipulation shall be without prejudice to the Settling  
13 Parties, shall not be deemed or construed to be an admission by any Settling Party of any act,  
14 matter or proposition and shall not be used in any manner for any purpose in any subsequent  
15 proceeding in the Federal Action, or in any other action or proceeding and the terms and provisions  
16 of the Stipulation, except as otherwise provided for in Section 6.3 of the Stipulation, shall have no  
17 further force and effect with respect to all parties to the Federal Action and shall not be used in the  
18 Federal Action, or in any other proceeding for any purpose, and any judgment or order entered by  
19 the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*.

20 20. The dates of performance of this order are as follows:

- 21 a. Foundry shall cause the Notice to be mailed to current Foundry shareholders  
22 of record within ten (10) days [of the entry of this Order]
- 23 b.
- 24 c. Federal Plaintiffs shall file and serve their motion for Final Settlement  
25 Approval and for an award of attorney's fees and expenses, and supporting  
26 papers, at least thirty (30) days before the Settlement Hearing;
- 27 d. Objections to the Settlement shall be deemed timely only if filed with the  
28 Court and served on the parties at least twenty-one (21) days before the  
Settlement Hearing;


- e. Federal Plaintiffs shall file and serve a reply in support of Settlement and for an award for attorneys' fees and expenses, which shall include a response to any timely-filed objections, at least seven (7) days before the Settlement Hearing;
- f. Defendants shall file and serve papers, if any, in support of Final Court Approval at least seven (7) days before the Settlement Hearing;
- g. Notices of intention to appear at the Settlement Hearing shall be deemed timely only if filed by a shareholder who previously filed a timely objection and only if filed with the Court and served on the parties at least five (5) business days before the Settlement Hearing; and
- h. The Settlement Hearing shall be as per above.

21. The Court retains jurisdiction over this Action to consider all further matters arising out of or in connection with the Settlement reflected in the Stipulation, including enforcement of the releases provided for in the Stipulation

22. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to current Foundry Shareholders.

**IT IS SO ORDERED.**

Dated: 12/5, 2008

  
The Honorable Ronald M. Whyte  
United States District Court